



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 09, 2022

IN THE MATTER OF:

Appeal Board No. 620733 A

PRESENT: JUNE F. O'NEILL, MEMBER

In Appeal Board Nos. 620732, 620733 and 620734, the claimant applied to the Appeal Board pursuant to Labor Law § 534 for a reopening and reconsideration

of Appeal Board Nos. 616445, 616446 and 616447, filed November 12, 2021, which reversed the decisions of the Administrative Law Judge and sustained the initial determinations holding the claimant ineligible to receive benefits, effective June 1, 2020 through June 7, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; reducing the claimant's right to receive future benefits by zero effective days on the basis that the claimant made a willful misrepresentation to obtain benefits; and holding the claimant ineligible to receive benefits, effective May 25, 2020, on the basis that the claimant did not comply with reporting requirements.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Upon consideration of the application to reopen, after due notice to the parties, the Board has decided to reopen and reconsider its decisions.

The Board held a combined telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

The Board makes the following:

FINDINGS OF FACT: The claimant is a citizen of the United States. Her home address was her uncle's home in Maryland. She worked for a New York based employer, a talent agency that represents and promotes artistic professionals to create campaigns for business brands, such as Coca Cola, Nike, and Adidas. In May 2018, the claimant started working for the employer in London looking after the employer's European clients. She worked from a shared office space in London, as the employer does not maintain an office in London.

On March 23, 2020, the United Kingdom went on lockdown due to the COVID-19 pandemic. The claimant worked from home beginning in March 2020. People were only allowed to leave their homes to purchase essential items or exercise. People in the United Kingdom could not travel or leave the country.

On June 1, 2020, the claimant was furloughed by the employer due to the COVID pandemic. She was not paid by the employer during the furlough. The claimant filed a claim for benefits by phone on June 1, 2020, effective May 25, 2020. She filed her claim for benefits from London. That same day, she spoke to Department of Labor representatives. She explained her situation to the representatives and indicated that she was in the United Kingdom, providing her address in London. The claimant was told not to worry and that the representatives would figure it out. She was directed by the representatives to certify every Sunday online or by phone.

The claimant received and read the Claimant Information Handbook which included the following information: "For any period that you are outside of the United States, Canada, Puerto Rico or the Virgin Islands: You are NOT eligible to receive benefits because you are not considered available to work (even if you are looking for work). Do not certify that you are ready, willing, and able to work."

On June 7, 2020, while in the United Kingdom, the claimant attempted to certify for benefits online. During the certification process, she was directed to a screen that said: "Unauthorized Access: You are attempting to claim Unemployment Insurance from outside the United States, a U.S. Territory or Canada. You may not claim benefits until you return to the United States, a U.S. Territory or Canada" She then received a message indicating that she needed to complete an out-of-the-country questionnaire, which she completed. The claimant then tried certifying for benefits by telephone and was able to

certify for benefits. She certified that she was ready, willing and able to work.

OPINION: The credible evidence does not establish that the claimant failed to comply with certification requirements. Significantly, the evidence establishes that prior to her attempt to certify online, the claimant spoke to representatives from the Department of Labor and advised them of her situation and that she was residing in the United Kingdom. After having that information, the representatives told the claimant that she should claim benefits each week, either online or by telephone. As the representatives provided these instructions with knowledge that the claimant was in the United Kingdom, we conclude that her certification by telephone, after seeing the "unauthorized" message online, does not amount to a failure to certify as required, regardless of the advisement in the claimant handbook or online at the time of certification. We also conclude that her June 7, 2020 certification, made on the advice of representatives of the Department of Labor who were aware that she was not in the United States, does not amount to a willful misrepresentation to obtain benefits

and does not constitute fraud.

We now address the issue of failing to comply with reporting requirements. It is well-settled that a claimant who is outside of a jurisdiction which is part of the Interstate Benefits Payment Plan is not available for work, cannot register and cannot report (See, e.g., Appeal Board Nos. 561517, 557498, 557285, 514717, 482073, and 372361). The claimant was, and remains, in the United Kingdom. The United Kingdom is not a signatory to the Interstate Benefits Payment Plan. The claimant was therefore unable to comply with reporting requirements. However, regulations provide that a failure to report may be excused if good cause for the failure is shown. (12 NYCRR 473.3(f)). The Court has held that "[w]hile failure to comply with the reporting requirements can be excused for good cause shown, this is a factual question for the Board to resolve" (Matter of Inatomi, 116 AD3d 1332 [3d Dept 2014]). Good cause must include an assessment of why the claimant was unable to report.

In the case at hand, the claimant was present in England because she was working for a New York employer. Beginning in March 2020, the country went on lockdown due to the COVID-19 pandemic. At that time, the people in the United Kingdom were not allowed to travel or leave the country. The claimant continued to work for the employer during the lockdown. We are not persuaded

by the Commissioner of Labor's contention that these restrictions were not absolute bans to leave the country. It is not reasonable to expect the claimant to disregard the recommendations regarding travel restrictions. In any event, the Commissioner produced no evidence at the Board hearing that the claimant would have been permitted to travel from the United Kingdom during the COVID-19 pandemic. In addition, not only was the Commissioner aware that the claimant was in the United Kingdom and had been residing there while working for her New York employer, but also the Department of Labor representatives assured her that they would figure it out and directed her to certify every Sunday online or by phone. The evidence does not establish that the representatives advised her that she needed to return to the United States to maintain her eligibility. The Commissioner contends that finding good cause is not consistent with prior decisions of the Appeal Board and would adversely affect the Department of Labor. However, the regulations require an assessment of good cause in determining whether a failure to report can be excused. Accordingly, while the claimant failed to comply with reporting requirements, she has demonstrated good cause for her failure to do so. Under these circumstances, due to the travel restrictions in place due to the COVID-19 pandemic coupled with the advice that she received from representatives of the Department of Labor, we further conclude that the claimant's failure to comply with reporting requirements is excused.

In reaching this decision, we note that there is no initial determination regarding whether the claimant was available for employment before the Board.

DECISION: The prior decisions of the Appeal Board are rescinded.

The decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 620732, 620733 and 620734, the initial determinations, holding the claimant ineligible to receive benefits, effective June 1, 2020 through June 7, 2020, on the basis that the claimant failed to certify for the benefit period within the seven-day period for such certification; reducing the claimant's right to receive future benefits by zero effective days on the basis that the claimant made a willful misrepresentation to obtain benefits; and holding the claimant ineligible to receive benefits, effective May 25, 2020, on the basis that the claimant did not comply with reporting requirements, are overruled.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER